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An Updated Approach to the Study of Terrorism

1. Introduction: The Progressive Reality of the Jihadist Terrorist Threat

An updated approach to the study of jihadist terrorist action requires an extensive terminological specification, which compels us to frame jihadist action within the phenomenon of terrorism,¹ while singling it out due to its specific connotations. Thus, it can be differentiated either in terms of its ideological approach or by determining its action strategies, since one of its most defining characteristics is metamorphosis, understood as the capacity of different forms, in which the threat can act, to evolve and transform, as observed in the emergence of new figures, such as lone wolves, foreign fighters, and returnees.

We must therefore abandon the commonly used terms “Islamic terrorism” or “jihadist terrorism”² since we should avoid the mistake of stigmatizing a religious belief such as the true Islam, which does not necessarily entail any violent connotation.³

It is our belief that the repeated use of those terms can contribute to the argumentation of jihadist terrorists, thereby turning the situation in their favor and creating a counterproductive side effect of reinforcing these groups’ false premise of Western hostility toward Islam, which would support the intent of presenting themselves as victims of the Western world intolerant to their beliefs. On the contrary, the very essence of democratic values in a multicultural society supports and defends freedom of speech, a freedom which is used perversely with criminal intent, to safeguard their proselytism, which is incidentally free of true religious purpose, promoting a lawless indoctrination leading to terrorist acts, perpetrated under the shelter of the existing liberties of a democratic society in an attempt against the safety of its citizens.⁴

1 L. de la Corte Ibañez, H. Hristowa Gergova, *El terrorismo como objeto de estudio: algunas notas introductorias*, “*Studia*” no. 14, 2011, pp. 29–43.

2 J. Jordán, P. del Pozo (eds.) *Terrorismo sin fronteras. Actores escenarios y respuestas en un mundo global*, Aranzadi, Pamplona 2010.

3 J. R. Thackray, *Dictionary of Terrorism*, Routledge, London 2004.

4 P. Wilkinson, *Terrorism versus democracy. The liberal State response*, Frank Cass, London 2005.

“Terrorists are attacking our way of life, in an attempt to spread fear and sow divisions in our societies. There are no quick and easy ways to resolve these issues. As the holder of the EU Council Presidency, it is incumbent on the Netherlands to help the EU find common solutions in these turbulent times. Unity and resolve are needed at all levels. The effective combination of European and national measures will form an important basis for those solutions.”⁵

There is a need to act within the framework of a free society committed to democracy, but in the way which avoids easy judgments or a convenient do-gooder attitude.

The origins of the Daesh movement can be traced back to the conflicts in Afghanistan and Iraq. What is of special importance, however, is that it has effectively transformed the reality of the Middle East and international politics in the summer of 2004 through the abandonment of traditional war techniques, the return to guerrilla war, and the proliferation of terrorist attacks, as well as by extending its territorial scope of action. This extended scope was evidenced by the terrible terrorist attacks in Paris, which have shaken Western democratic conscience, or by the fatal attack against the Spanish embassy in Kabul, causing the death of two Spanish policemen and an Afghan security agent, as well as by the more recent terrorist attacks perpetrated in Istanbul, Malaysia, Burkina Fasso, and Brussels.

These acts are not just contrary to democratic principles; they also articulate terrorist politics and actions. The appearance of the international jihadist movement initially shared its goals with the terrorist movement of Al Qaeda. However, it has to be taken into account that there is no single doctrine of hierarchical unity in these terrorist groups, since the emergence of ideological conflicts between their members can be noticed, dividing them with regard to both their objectives and doctrines. The term “jihadist terrorism” can be no longer applied to extremist orthodoxies, since this usage may lead to an erroneous perception which depoliticizes the conflict.

Currently, jihadist terrorism has equipped itself with an ideology which perfectly encapsulates the concept of “totalitarian ideology.” It is clearly antidemocratic, because it systematically encourages attempts against the lives of those

5 J. Jordán, *El terrorismo yihadista en España: evolución después del 11M*, 2009, available at http://www.realinstitutoelcano.org/wps/portal/rielcano/contenido?WCM_GLOBAL_CONTEXT=/elcano/elcano_es/programas/terrorismo+global/publicaciones/publ-amenaza+espana/dt7-2009, accessed 9 November 2015.

opposing it.⁶ The goal of the terrorists is broadly political, as they seek to destabilize the societies in which they act. The political action of jihadist terrorism aims to subvert the established rule of law in order to implement Islamic law. It thereby becomes the foremost exponent of terrorist action focused on a “far enemy.”⁷ Their religion is not as important as their submission to the above mentioned ideology. We should therefore underline how, in the execution of their terrorist policies, the highest number of victims are fellow Muslims. It is a mistake to ground jihadist terrorism exclusively in a fanatical interpretation of Islam.⁸

This has been evidenced by a recent operation by the EU judicial cooperation, which in November 2015 enabled 15 simultaneous arrests in Italy, Norway, the United Kingdom and Finland, dismantling a terrorist cell composed mainly of Kurds. Once their intentions were clarified, one could see that they not only strived to carry out terrorist acts, kidnapping diplomats on the Norwegian soil, but also aimed to overthrow the Iraqi Kurdistan government and substitute it for a caliphate ruled by the Islamic law, also known as *sharia*.

It is necessary to approach this phenomenon, taking into account its aim of re-Islamizing society through the creation of real political structures (as it was made clear in their statements after proclaiming the Caliphate, the Islamic State, the claim on Al Andalus, particularly relevant to Spain due to the existence of the enclaves of Ceuta and Melilla).⁹

It also seems advisable to separate the phenomenon of radical individual perception,¹⁰ due to the proliferation of movements nurturing radicalization, as a result of the social crisis, which acts as a breeding ground, without a doubt

6 I. Bremmer, *How terror could kill the European project*, “Time” vol. 186 no. 22–237, 2015, p. 11.

7 R. Bjarnason, *A Report from the democracy incubator hackathon*, World Forum for Democracy 2015, 21.12.2015, available at <https://www.opendemocracy.net/wfd/robert-bjarnason/world-forum-for-democracy-2015-report-from-democracy-incubator-hackathon>, accessed 12 January 2016.

8 K. Malik, *Europe’s Dangerous Multiculturalism. Why the Continent Fails Minority Groups*, 2015, available at <https://www.foreignaffairs.com/articles/western-europe/2015-12-08/europes-dangerous>, accessed 18 December 2015.

9 B. M. Juergensmeyer, *Terrorismo religioso. El auge global de la violencia religiosa*, Siglo XXI, Madrid 2001.

10 M. Crenshaw, *The psychology of political terrorism*, in: *Political Psychology. Key readings* J. T. Jost, J. Sidanius (eds.), Psychology Press, New York, 2004.

enabling the strengthening of violent stances.¹¹ Radicalization is not a sufficient motivation for terrorist acts, although it can elicit terrorist actions.¹²

Simultaneously, the emergence of a so-called “new terrorism,” exercised by those who are ready to assume a fanatical interpretation of Islam, coexists with other radical religious orthodoxies. It is indeed true that jihadist terrorist action thrives in the shadow of an idealization of the Caliphate in opposition to the loss of values in Western society, which, in turn, assists the recruitment of young European citizens and, particularly, the adherence of women; for, as the research of García Calvo shows, they are targeted by propaganda¹³ (her study provides evidence of how 75% of all individuals arrested on charges of jihadist terrorism in Spain are female).

The study of recent acts of jihadist terrorism allows us to simultaneously verify that we are facing a phenomenon which is not static, but undergoes constant evolution. That is why it is reasonable to consider any research as “unfinished.”

Our aim, then, is to articulate the notion of protecting the security of our society against the proven vulnerability of the State, considering this phenomenon from an all-encompassing perspective, which cannot ignore social movements, and stressing the phenomenon of radicalization and new actions of foreign fighters, since this phenomenon “concerns violent radicalization and follows recent terrorist attacks by foreign fighters in Europe” and “appropriate and concrete responses to the phenomenon of radicalization and the solutions to deal with this common challenge” are searched. It was expressed in these terms in the Conclusions of the Council approved on 16 June 2015, which pay particular attention to the radicalization in prisons and a preventive approach to antiterrorist action.¹⁴

The current approach adopted by the Commission, which prioritizes “combating radicalization, marginalization of youth,” has been combined with the European Fundamental Rights Agency to promote respect, non-discrimination, fundamental rights, freedoms and solidarity. The Commission is currently

11 B. M. Juergensmeyer, *Terrorismo religioso. El auge global de la violencia religiosa*, Siglo XXI, Madrid 2001.

12 F. Foley, *Políticas antiterroristas en Europa*, available at http://fundacion.unirioja.es/formacion_cursos/view/312/sub:2354, accessed 7 December 2015.

13 F. Reinares, C. García Calvo, *Terrorist network and organisations aspects of the current jihadist mobilisation in Spain*, available at www.realinstitutoelcano.org/wps/portal/Web/riecanoes/contenido?WCMGlobal-context, accessed 9 January 2016.

14 Council of the European Union, *Response to foreign terrorist fighters and recent terrorist attacks in Europe* available at <http://www.consilium.europa.eu/en/meetings/jha/2015/06/15-16/>, 2015, accessed 21 January 2016.

implementing all-encompassing initiatives (education, culture, sports, employment, welfare, security) and a new policy on how to use education to prevent radicalization.¹⁵

While Al Qaeda's attacks against American interests started in the twentieth century against the diplomatic sites in Kabul and Tanzania, or against the US Destroyer Cole in Yemen, those attacks have been repeated in the current century in New York, London and many other cities. The terrible actions of Daesh and the Paris terrorist attacks represented a turning point in the awareness, inspiring a holistic approach to the issue.¹⁶

The evolutionary reality of the jihadist terrorist threat is embodied in the increase of their indoctrination policies. The responsive action of our security forces can be seen in the Spanish case. These terrorists are Muslims, and many among them are converts. We can point to the recent investigations conducted by Spanish Police in the Spanish city of Ceuta (December 2015) and the Spanish enclaves of Ceuta and Melilla,¹⁷ but it was in Barcelona where the arrests took place.

This recent reality of the "foreign fighters", whose actions as returnees constitute a serious security risk in Western countries, has also contributed to increase the perception of it as one of the most serious threats to global society.¹⁸

According to General Joseph L. Votel, at the "Counterterrorism: Unconventional Approaches to an Unconventional Threat" conference¹⁹, the lesson to be learned from 9/11 was the lack of imagination to envision that a group of terrorists could learn to operate large commercial passenger airliners and then fly them into tall buildings where thousands worked. In his view, it was also this lack of imagination, that has led us to collectively dismiss intelligence reports pointing in that direction.

15 M. Sageman, *Understanding terrorism networks*, University of Pennsylvania Press, Philadelphia, 2004.

16 United Nations Strategies *UN 2006 Global Counter-Terrorism Strategy*, 2015, available at <http://www.Un.org/terrorism/strategy-counter-terrorism.shtml>, accessed 9 November 2015.

17 J. Jordan, *Evolución organizativa de la militancia jihadista en España*, 2014, available at http://www.realinstitutoelcano.org/wps/portal/web/rielcano_es/contenido?WCM_GLOBAL_CONTEXT=/elcano/elcano_es/zonas_es/ari12-2014-jordan-evolucion-organizativa-militancia-yihadista-espana, accessed 9 November 2015.

18 European Council, *Conclusions of European Council meeting 15 October 2015*, available at <http://www.consilium.europa.eu/en/press/press-releases/2015/10/16-euco-conclusions/>, accessed 20 January 2016.

19 F. Reinares, C. García Calvo, *Terrorist network ...op.cit.*

2. The Surge of Home-Grown Terrorism in Spain

While we are fully aware that the Spanish case is still far from the situation in other European nations, it is reasonable to assume that our country lacks the jihadist mobilization issues, which are at work in countries such as Germany, France, the United Kingdom, and Denmark. It is worthy to discuss the opinion of experts Fernando Reinares and Carola García Calvo, researchers at the Elcano Royal Institute, a think tank for international and strategic studies, who have had the opportunity to present the paper *Terrorists, network and organisations: aspects of the current jihadist mobilisation in Spain* at the III Forum organized by the Royal Institute on Terrorism and which has acquired particular significance after being exposed to unfortunate coincidence due to its proximity to the Paris terrorist attacks.²⁰

The authors defend the existence of a home-grown and endogenous jihadism in Spain. This vision is founded on ascertaining that 45% of arrested individuals in Spain for Islamic radicalization motives are Spanish nationals, and 40% were born in Spain.

The study is of indubitable value, as it allows us to delve deeper into the profile of the radicals established in our country. We now have the opportunity to verify their course of action, which does not correspond to the usual profile of the lone wolf, since it includes collaborating with other, newly or previously established groups. Their ties to the organization and jihadist terrorist networks are also clarified: they are related mostly to the Islamic State, followed by the Al Nusra Front (27.6%), MUYAO (12.2%), Harakat Sham al Islam (11.2%) or AQMI (7.1%).

Once this has been ascertained, the orientation of the functions assumed by these terrorists is clarified as mainly focused on tasks of proselytism 65.3%, fundraising 60%, carrying out technically operative actions 42.1%, and training 29.5 %.

Based on the work of Fernando Reinares and Carola García Calvo, we can sketch the basic features of the Spanish jihadist: a man of around 28 years of age, born in one of the two big cities where jihadists are usually natives: Ceuta and Melilla (almost 76%). Their actions are reported mostly in Catalonia, since it is there where the profile is located and where most of the arrests take place. In

20 Real Instituto Elcano, *III Foro Elcano sobre Terrorismo Global*, 2015, available at http://www.realinstitutoelcano.org/wps/portal/web/rielcano_es/actividad?WCM_GLOBAL_CONTEXT=/elcano/elcano_es/calendario/actividades/iii-foro-elcano-terrorismo-global, accessed 10 January 2016.

terms of nationality, the researches concluded that the number of jihadists born in Spain is 7.3% lower than that of the residents in Spain (47%).

This research allows us to pinpoint their provenance from the region of Tangiers-Tetuán-Alhucemas (every four in ten arrested individuals came from there), as well as the primary provenance of 75.8% of all arrested individuals, who were born in Ceuta and Melilla, followed by Morocco (37.4%), Tunisia (5.2%), Algiers (3.5%) and France (2.5%).

The ten arrests carried out between 2011 and 2015 have taken place in Tangiers, Tetuán, Alhucemas (four in ten arrests), and within the peninsula, 5% in Barcelona and 2.4% in the following A Coruña, Almonte Cádiz, Ciudad Real, Granada, Sant Boi de Llobregat, Sant Feliú de Guixols, and Tarragona.

It is necessary to focalize policies in these areas, implementing “strategies in the environment where they grow, with a significant work in the Internet and social media, are important ways of radicalization.”

3. Awareness within EU Institutions and International Response

The fact that six of the most significant terrorist attacks of 2015 were perpetrated on the European soil evidences the challenge faced by the security forces of the Member States, as well as the loss of individual response capacity to confront them. The evolution and current increase of the threat has raised awareness within the EU’s institutions. The EEAS, EU Agencies and Interpol finalized last May a first set of common risks indicators.

Such is the conclusion to be extracted from the statement: “les attentats terroristes perpétrés... n’ont fait que renforcer notre détermination à poursuivre notre lutte sans concession contre le terrorisme.”²¹ This is also apparent in the European Council Declaration of 12/2/2015, as well as in the Conclusion of the Council from 20/11/15, and in the periodical undertaking by the European Council of the defense of its values and the efficacy of convened action. For their part, Juncker’s Commission has set European security as one of its priorities, including an “upgrading” process in the security program for 2015. In terms of priorities for immediate action, these are:²²

21 European Commission, *Commission Work Programme 2016*, available at http://ec.europa.eu/atwork/pdf/cwp_2016_annex_i_en.pdf, accessed 20 January 2016.

22 Council of the European Union, *Draft Council Conclusions on the Renewed European Union Internal Security Strategy 2015–2020*, 2015, available at <http://www.consilium.europa.eu/en/meetings/jha/2015/06/15-16/>, accessed 21 January 2016.

1. Tackling terrorism and preventing radicalization.
2. Disrupting organized crimes.
3. Fighting cybercrime.

The European Council stressed on February 12th, 2015 the urgency of adopting measures reinforcing the cooperation between national security services across the EU. Although the primary responsibility has to be assumed by the States, they are urged to improve the information exchange in order to deepen the combined operational analysis of the terrorist threat. “The present proposal is without prejudice to responsibilities incumbent on the Member State with regard the maintenance of law and order and the safeguarding of internal security in accordance with Article 72 TFEU.”²³

The ultimate objective in facing these new challenges is indubitably the defense of “universal values,” preserving a plural society, non-discrimination, tolerance, justice, solidarity and equality, taking into account the threat of free circulation within the European territory, fostering the movement of terrorists using it as a mere transit to reach the conflict areas in Iraq, Syria, etc.²⁴ The new approach assumes the insufficiency of the European action deployed and the current deficiencies as well as the need for a “full use” of the instruments already in place that are underused at the moment. There are means which should be better employed, in particular the Europol Counter Terrorism CT, Eurojust, PrUm, SIS II, Eurodac and Interpol. It would be also advisable to develop a better interaction by the EU Coordinator for the fight against terrorism with the Commission and the High Representative, considering the fact that they are also required to inform the European Council, which has repeatedly urged the Member States to improve the quantity and quality of information they share on terrorist suspects.²⁵

At any rate, all measures to enhance security must implement the obligation of respect of fundamental rights. Any measure should be in accordance with principles of necessity, proportionality and legality, with appropriate safeguards to ensure accountability and judicial redress (Article 6).²⁶

23 European Parliament, *Preventing radicalisation in the EU*, 2015, available at http://www.europarl.europa.eu/RegData/etudes/ATAG/2015/571342/EPRS_ATA%282015%29571342_EN.pdf, accessed 15 December 2015.

24 European Commission, COM (2016) 230 final, Brussels, 20.4.2016.

25 Europol, *EU Terrorism Situation and Trend Report*, 2015, available at <https://www.europol.europa.eu/content/european-union-terrorism-situation-and>, accessed 14 January 2016.

26 Council of the European Union, *Conclusions of the Council of the European Union and of the Member States meeting within the Council on enhancing the criminal justice*

The EU is a rule of Law Community. Any limitation is subject to the conditions described in Article 2 (1) of the Charter of Fundamental Rights, namely to the principle of proportionality that will be respected in limiting the scope of the offenses to what is necessary to allow for the effective prosecution of acts that pose a particular threat to security.

Among current priorities is a better use of information, whether through the exchange of information between national authorities responsible for the fight against terror, which in the Schengen cases would give way to a second generation of data related to foreign fighters, or through a systematization of the information exchange regarding terrorists also linked to organized crime, including citizens of third countries in “ECRIS”.

A better interaction between Eurojust and Europol should be promoted. The implementation of the SIENA system (Information Exchange Network Application) and the “Europol System” were particularly helpful, as well as the so far unfinished “EIS” for Counter-terrorism. Strengthening the exchange of information within Eurojust by virtue of the *Council Decision 2005/671/JHA* and Article 13 of the Eurojust Decision is of particular importance.

As such, “Member States will ensure that national authorities enter systematically data on suspected foreign terrorist fighters into the SIS II, in particular under Article 36. 3, carry out awareness raising and training on the use of the SIS and define a common approach to the use of the SIS II data relating foreign fighters.”²⁷

The operationalization of this common risk as the “New Border Package” conveys Frontex’s support of awareness-raising training in the Member States. The European Border Guard and the Smart Borders initiative planned to implement a more effective control over the EU’s borders by tracing the third-country nationals movements across the EU’s external borders.

Particularly relevant is also the interaction regarding *cybercrime*. Since last March, the European Centre of Excellence, the EU Internet Referral Unit (EU IRU), has actively searched the Internet for terrorist materials, helping to reduce the rising volume of terrorist materials available and supporting competent authorities. Europol urged to coordinate and share the identification task (flagging)

response to radicalisation leading to terrorism and violent extremism, 2015, available at <http://www.consilium.europa.eu/en/press/press-releases/2015/11/20-conclusions-radicalisation/>, accessed 18 December 2015.

27 Council of the European Union, *Draft Conclusions of the Council of the EU and of the Member States meeting within the Council on Counter-Terrorism*, 2015, available at <http://www.statewatch.org/news/2015/nov/eu-jha-20-nov-draft-conclusions-14298-15.pdf>, accessed, 4 December 2015.

of terrorist, violent or extremist online content with relevant partners. As its main objective, the EU centre (IRU) assesses the material and confirms whether it has breached the terms and conditions of the companies, in order to remove that material from websites and pass their URLs to the host companies. This “Check the web initiative” allows Europol reports on the evolution of the threat, helping national authorities and taking into account the potential of the technological evidence due to its new characterization compared to the classic one, its endurance over time, the machinability, volatility, and mass. Thus, the “e-evidence” of terrorist networks, in light of the Council Decision 2005/671/JHA, forces the State Parties to exchange information in investigations, prosecutions and convictions. They already use a reserved but transcendent report which makes it possible to approach to the case-law of State Parties in order to improve the good practices, as well as to develop a deeper insight into the phenomenon. The Paris attacks evidenced the need to improve the efforts at external borders, both perfecting the FTF register included in the SIS II and checking the SIS II and Interpol databases.

For this reason, the work at Eurojust tends to develop the legal frame of recruiters and facilitators, and must be coordinated with the control of foreign fighters through the “Europol Focal Point Travelers”, enforcing the November 2015 conclusions, which demand: “Member States will make the maximum use of these capabilities to improve the overall level of information Exchange between CT authorities in the EU. Member States will ensure that the relevant national authorities significantly increase their contributions to Focal Point Traveler at Europol reflect the threat and connect to relevant Europol information exchange systems.”²⁸

Regarding the action deployed by Europol and on its behalf, the Centre for the fight against terrorism has to support the action of Frontex through the cooperation between its main partners. Eurojust indeed possesses two valuable instruments: on the one hand, “Liason Prosecutor,” and, on the other hand, the agreements with 37 non-Party States (MENA), reinforcing cooperation with those in North Africa, Near East, Western Balkans, and Turkey.

The idea of granting more efficacy to the European action – and consequently, the preventive nature of the EU’s activities – demands as an essential tool the interconnection of the Europol countries, which, together with the Secure Information Exchange Network Application (SIENA), should devise and operate within a specific anti-terrorist area, enabling bi- and multilateral communication through cooperation agreements, including national authorities from third party

28 Council of the European Union, *Draft Conclusions of the Council...*op.cit.

countries outside Europol. Since not all State Parties have used EIS, there is still a long way to go on the path toward a more effective control of foreign fighters.

4. Toward a New Framework Directive on Terrorism

The 2016 action program by the Commission includes reviewing the Framework Directive on terrorism from a teleological perspective.

The legal frame currently in effect is being reviewed, as captured in the current proposal for a “Directive on Terrorism.” The regulation reform is ambitious, as it tries to replace the framework currently in effect, that is, the Framework Decision 2002/475/HA, whose contents are nowadays considered insufficient to create the intended response to the current European challenges, and do not reflect the global approach. For this reason, its contents need to be adapted both to the current reality and to the already established international parameters.²⁹

“The purpose of the reform is to replace the Directive in effect from a teleological perspective which will criminalize travel for terrorist purposes, undertaking terrorist training as well as support activities conducted by networks and recruiters, as well as a tighter control of firearm trafficking, which demands an increase of international cooperation, while improving preventive action against radicalization.”

The COSI on 16 September 2016 will be focused “on firearms, strengthening border controls, information, terrorist financing”, provided that within the current perspective on criminal justice, the dissuasive purpose prevails over the traditional punitive intent. The aim is to create a new “common response” with “specific” measures, conceived for the concerted European fight against terrorism.

As it was already foreseen for 2015, we cannot postpone the supervision of current legislation if we wish to improve and facilitate the exchange of “loyal” information, reinforcing the “traçabilité,” and harmonizing the “marquage” with common regulations in order to neutralize fire arms.

It is precisely because of the intensification and acceleration of terrorism, that the adoption of common and more adequate legislative measures seems of paramount importance, as it was graphically stressed in several statements (by the

29 Council of the European Union, *Conclusions of the Council of the European Union and of the Member States meeting within the Council on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism*, 2015, available at <http://www.consilium.europa.eu/en/press/press-releases/2015/11/20-conclusions-radicalisation/>, accessed 18 December 2015.

President and Vice-president of the Commission), which went as far as to announce the creation of a “preventive arsenal.”

It is therefore indisputable that there is a need within the legal frames both to harmonize the domestic laws of the Member States and to predict the adaptation of pre-established international parameters, since various “pre-existing” obligations can be deduced from them, such as the exchange of information between competent national authorities. That is why the simplifying of the 2006 Frame Decision was foreseen and accompanied by the intelligence task in the execution of the law between the EU Member States.

This new perspective³⁰ brings to the table a new classification within the Directive project to regulate new cases. The main aim is “to approximate the definition of terrorist offenses in all Member States by introducing a specific and common qualification of certain acts as terrorist offenses.” It considers the motivation of the offender, taking into account two elements: the objective element, as “it refers to a list of serious criminal conducts” whose definition is made by reference to national law, and the subjective element, “as these acts are deemed to be terrorist offenses when committed with a specific intent.”

States should criminalize the direction of, or participation in, the activities of terrorist groups, considered “by themselves” as independent criminal acts, which should be prosecuted as terrorist offenses (for example, the “attempt of recruitment and training, travel abroad with the purpose of participating in the activities of a terrorist group, and the financing of the various terrorist offenses”). These acts are also defined in the text of the Directive proposal (articles 3 and 4, Titles II and III). Such offenses do not require to be committed (article 15); the intent or knowledge of the perpetrator or potential perpetrator as to his conduct having a potential to lead to the commission of or the contribution to terrorist offenses are also included. The proposal is also focused on elements that should be proven in accordance with domestic law and, moreover, in accordance with the *acquis* on procedural rights and guarantees of the fundamental right to fair trial as enshrined in the European Convention of Human Rights and the Charter of Fundamental Rights.

In this vein, and as a response to one of the main concerns, stands the global regulation against the so-called “foreign fighters”, traveling abroad for terrorism. The act of traveling is considered under some conditions, and with the intent and

30 Council of the European Union, *Enhancing counter terrorism capabilities at EU level: European Counter Terrorism Centre (ECTC) at Europol and counter terrorism related information sharing*, 2015, available at <http://www.statewatch.org/news/2015/nov/eu-council-europol-ECTC-14244-15.pdf>, accessed 17 December 2015.

purpose of participating in activities of a terrorist group, or to provide or receive training for terrorism. The provision uses the term “organization” in order to cover every conduct related to practical arrangements connected with the traveling and is completed by the term “facilitation” with the aim to cover any other conduct that does not fall within the term “organization,” such as assisting the traveler in reaching his destination.

A further innovation of the proposal is the provision against “the financing of traveling abroad for terrorism,” as stated by article 5 of the Additional Protocol and N.5 Recommendation of FATF. Financing terrorism is criminalized even when there is no specific link to a specific terrorist act. States are now bound in some of the terrorist related offenses because the proposal considers terrorist activity irrespectively of whether a terrorist offense has been committed. Under this provision, States must take measures to ensure that preparatory acts for these offenses are criminalized in domestic law.

In order to ensure the fight against the dissemination of messages through the Internet encouraging the commission of terrorist offenses or providing for terrorist expertise, art. 3 (1) of Framework Decision 2008/919/JHA was introduced, also to implement Articles 5 and 6 of the Council of Europe Convention on the prevention of terrorism. New offenses have been included in order to implement the Additional Protocol of the above-mentioned Convention. The proposal covers not only the offenses of receiving training or terrorism and traveling abroad for terrorism but also the receiving of training enabling the recipient to carry out or contribute to the commission of terrorist offenses. Furthermore, in line with Article 3 of the Protocol, it holds that a reception of training could take place either in person or through electronic media, that the use of the Internet for training should be considered as an offense, and that the perpetrator must normally take an active part in the training. However, the forms applicable to criminalize such activities remain in the domestic law “self-study.”

Adapting regulations is a response to the carrying out of international engagements, through the Security Council Resolution 2178 (2014) regarding foreign terrorist fighters and its Protocol. On a regional level, the regulatory efforts made by the Convention to prevent terrorism and recommendations of the action group concerning the financing of terrorism are prompted within the Council of Europe.³¹ The adaptation rests on two nuclear ideas: a global approach and the consolidation

31 Financial Action Task Force (FATF), *International Standards on combating money laundering and the financing of terrorism & proliferation*, 2012, available at http://www.fatfgafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf, accesse 24 November 2015.

of the *acquis*. The approach now required is necessarily “global”, also in consonance with the new notion of security, as regards the existing loopholes and an effective response in the fight against them, taking advantage of the favorable climate of consensus regarding the heightened risk due to the crossing of borders. This nuclear idea is not foreign to the convenience of reaffirming, on a European level, the *acquis* in this matter, also guaranteeing its “accessibility”, which is materialized through simplification. At the same time, the said proposal aspires to consolidate the *acquis* developed during the last thirteen years of application.

For this reason, both the Council and the Parliament agree on the articulation of legislative measures, which, according to the European Justice Council in its meeting in Riga, could allow “a common understanding of terrorism offenses in light of UNSCR 2178(2014),” or, as the text adopted by the Parliament on February, 11th last stressed, “the need to harmonize criminalization of foreign-fighter-related offenses and avoid prosecution gaps by updating the Framework Decision on Terrorism”, which demands “a more coherent, comprehensive and aligned national criminal law provisions... across the EU to be able to effectively prevent and prosecute foreign terrorist fighters-related offenses and to respond in an appropriate manner to the increased cross-border practical legal challenges.”³²

Also in this spirit, the Commission, in its report justifying the Directive, deemed it a a a first step which should open the path for further developments, since it mirrors a more ample engagement, which “will pave the way for the conclusion of the Additional Protocol and the Convention”. Thus, it is also linked to the prevention of radicalization, which can develop into violent extremisms or even terrorist acts.

The Commission itself had already carried out very positive research in this area, stemming from the “Communication Preventing Radicalization to Terrorism and Violent Extremism, Strengthening the EU’s response.”³³ The High Level Conference in October 2015, whose purposes were to explore options in European criminal systems for dealing with foreign fighters, returnees and other violent religious extremists with terrorist motives, and to exchange experiences on appropriate responses to the phenomenon of radicalization in a prison context, as well as the possibility of integrating rehabilitation into the criminal justice response to foreign fighters/returnees. The 13 Justice Ministers and deputy justice ministers/

32 R. Harry, W. Richardson, P. Gordon, J. E. Moore, *The economics cost of and consequences of terrorism*, University of Southern California, New York, 2007.

33 European Commission, *Preventing Radicalisation to terrorism and Violent Extremism: Strengthening the EU’s Response*, 2015, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2013:0941:FIN>, accessed 29 October 2015.

state secretaries of the 17 EU Members State and the EU policy-makers agreed to join forces to find more concrete responses and solutions to deal with this common challenge: “preventing radicalization to violent extremism with special focus on prisons” is now considered essential, because the radicalized people in prisons have a considerable impact in terms of the risk of security. They suited the “Council of Europe Guidelines for prison and probation staff,”³⁴ with the creation of an Excellence Centre linking “practitioners” and establishing a “network” which, according to the current Commission report, will facilitate the exchange of good practices and cement the “know how.”³⁵

The Radicalization Awareness Network (RAN) acts as a think tank for EU countries, gives support to priority third countries, and influences policy-making. As the legislation and the prison and probation systems differ between EU Member States, its recommendations provide an oversight of current lines of thinking amongst prison and probation practitioners, and give support to decision-making processes.

In her Opening Speech at the October High level Ministerial Conference, V. Jourova, the EU’s Commissioner for Justice, Consumers and Gender Equality urged “to move on together identifying concrete actions... Key questions included how to reconcile prison and de-radicalization, how to reconcile prevention with repression and rehabilitation, and how to best detect early signs of radicalization.”³⁶ She also believed that the adaptation in question should be complemented by specific attention to the diversification of actors and the modification of their *modus operandi*.

Particular attention must be paid to the so-called “foreign terrorist fighters”. Even if we acknowledge that they are not a new phenomenon, their current percentage is quite noteworthy and “unprecedented”. Special attention is attached to actors traveling to the conflict areas, whether Syria or Iraq, either to take part in the combat or to receive training. A cohesion with the remaining EU policies is

34 Council of the European Union, *Enhancing counter terrorism capabilities at EU level: European Counter Terrorism Centre (ECTC) at Europol and counter terrorism related information sharing*, 2015, available at <http://www.statewatch.org/news/2015/nov/eu-council-europol-ECTC-14244-15.pdf>, accessed 17 December 2015.

35 FRONTEX, *Annual Risk Analysis 2014*, 2015, available at http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2014.pdf, accessed 3 November 2015.

36 European Commission, *High-Level Ministerial Conference Criminal justice response to radicalisation*, 2015, available at http://ec.europa.eu/justice/events/response-radicalisation-2015/index_en.htm, accessed 17 November 2015.

sought, since the relevance and interconnection both for European security policies and the internal security of the Union itself has been proven. According to Europol, since 2014 the information exchange has been favored, which should additionally be increased, since, by the end of November 2015, 1595 foreign terrorist fighters have been registered in SIENA (Secure Information Exchange Network Application) by virtue of the information provided only by EU Member States, 5 third parties, and Interpol.

The “complementarity” of the measure with those adopted is needed in order to freeze assets belonging to terrorists and said organizations by virtue of the Council Regulation of 2008 executing the Security Council Resolutions (UNSCR 1267 y 1390), as well as in relation to the so-called autonomous measures by the EU, adopted with regard to Al Qaeda. It was also stressed how the Directive regarding terrorist financing 2015/849/EU shows a preventive nature.³⁷ Further on this line of reasoning, we can find the text of the specific Communication concerning Syria and Iraq returnees.³⁸

The idea of focusing the current common effort on identifying the legal frame of this reality is clearly due to the proliferation of individuals acting in an isolated fashion. It now needs to reflect the reality of the so-called “home-grown terrorists,” that is, radicalized lone attackers and “frustrated” terrorist travelers. The phenomenon has increased considerably over the last years, and they should be considered as future terrorists – perhaps, not now, when they are “plots” but in the future, when they might take part in tragic terrorist attacks.

We must pay utmost and specific attention to the changes in their *modus operandi*, which is increasingly worrying because of the shift from an essentially individualistic action to another, now arranged between groups or cells, whose actions can evolve in such a way that will magnify and transform the very scope of the attacks. This combination of means of action of several operative groups is more than predictable, even though it has not yet been generalized, because the attacks carried out in 2014 follow the formula of other attacks by “individual terrorists.” The latest actions by France and Belgium have awoken the fear that such an orientation will be promoted in the near future, together with the circulation to other Member States. This risk must be carefully considered, as well as their very permanence in the European Union.

37 European Commission: Feasibility Study for an European Travel Information and Authorisation System (ETIAS) Final Report 16 November 2016.

38 European Commission, *Elements for an EU regional strategy for Syria and Iraq as well as the Da'esh threat*, 2015, available at http://ec.europa.eu/echo/files/news/20150206_JOIN_en.pdf, accessed 19 November 2015.

For this reason, the Directive Proposal's contents need to be adapted to the current reality. At the same, they should be adapted to the already established international parameters. The UN Security Council's view of terrorism in our day, as a threat to peace and security creates certain obligations for the States, which should adapt their behavior to the international agreements and standards, combining the duty of mutual respect of Human Rights and the rule of law.

The isolation of detainees has been criticized due to concerns that it will not be circumscribed to cases characterized by an urgent need to avoid dire consequences which can put in danger the life, freedom or physical integrity of a person, or by an urgent need for swift action by the court to avoid seriously compromising a criminal procedure. The national effort in the fight against terrorism should be also related, according to UN parameters, to the idea of efficacy with the adoption of instruments and measures facilitating investigations, with particular attention paid to the evolving nature of this phenomena. This may lead to a legal and positive obligation to guarantee, in their respective legal systems, a classification of different crimes linked to traveling to third party countries with different purposes related to terrorist activities. Article. 6 of the Resolution 2178 (2014) includes: "a) travel or attempted travel to a third country with the purpose of contributing to the commission of terrorist acts or the providing or receiving of training; b) the funding of such travel; c) the organization or facilitation of such travel."

The question is therefore to ensure the prosecution of such acts and their current *modus operandi*, avoiding the existing loopholes in criminal law (which we should remember are a by-product of already assumed international legal agreements).

The provision adequately addresses the purpose in Article 6 of the UN Resolution, since the 2015 Additional Protocol to the Convention for the Prevention of terrorism complements the classification of the Convention text itself, broadening the events alluded to in the universal resolution, as it includes: participation in an association or group or the purpose of terrorism (Article 2), receiving training for terrorism; traveling or attempting to travel for terrorism purposes (Article 4), providing or collecting funds for such travels (Article 5), and organizing and facilitating such travels (Article 6), although it also specifies the obligation to reinforce the occasional exchange of information between the State Parties (Article 7).

Regarding the current European legislation, whose alteration we are currently discussing, we should first of all remember that the EU has ratified both texts from the Council of Europe's Convention and Protocol, which also brings up the need to perfect the 2002 European regulation. The framework decision encompassed only certain terrorist acts, although it did pay particular attention to the participation

in terrorist groups, in whose regard it incorporated financing, recruitment and training as well as laws concerning “aiding and abetting, incitement and attempt of terrorist offenses.”

At the same time, these changes in legislation were expedited by virtue of the rising awareness of the true seriousness of our current situation, which also leads Member States to meet their individual obligations. The defense of rights and of the security of the citizens itself was necessary, according to the Directive 2012/29/EU.³⁹

The momentum was started by the terrorist attacks of 13th November in Paris, which “tragically illustrated that the risk can materialize, hence the need to scale up the EU-level response by adapting it to the threats.”⁴⁰

However, as distinct from the UN’s text, the European text 2002/475/JHA which determines the need for “criminalization of terrorist financing to the extent that funding is provided to a terrorist group”, is not as explicit and rigorous, since the Convention Protocol of the European Council already describes all crimes linked to terrorism, be it recruitment or travel with terrorist purposes, and stands in contrast to the European text, which does not require trips to be typified as having a terrorist intent: it “does not explicitly require the criminalization of being trained for terrorist purposes.”

The obligation to control the said groups originates in the Convention regarding Terrorist Financing, developed in the Recommendation on the criminalization of the terrorist financing N^o5 adopted in 2012 by The Financial Action Task Force (FATF). The interpretative development of this text has allowed us to consider the financing from both sides, that is to say, both in terms of direct financing of the crime and in terms of indirect assistance in its perpetration. The clarification included traveling to the State of origin or residence with the purpose of “the planning or preparation of terrorist acts, as well as the providing or receiving of a terrorist training.”

39 Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012, Minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA of 25 March 2001 (OJ L 315, 14.11.2012), 2012, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>, accessed 27 November 2015.

40 European Commissions, *Proposal for a Directive on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism combating terrorism*, 2003, available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agendasecurity/legislativedocuments/docs/20151202_directive_on_combatting_terrorism_en.pdf, accessed 3 December 2015.

The ultimate objective is correct in that it attempts to maximize its power of deterrence through legislative measures, which would allow to fill in the currently detected loopholes, which demand control of financing, organization and ease of travel, including material and logistic support, as well as procuring fire guns and explosives, shelter, means of transportation, and other wares.

The complexity of proving their belonging to a terrorist organization in practice, particularly if the individual has not had direct or physical contact with the organization itself, is undeniable. In the previously mentioned Seminar held in Madrid, the work of the Guardia Civil in creating their “Forensic Intelligence Reports,” also called “Information Analysis reports,” was greatly valued.

It does seem reasonable to assume that the lack of both gun and explosives control have made committing those crimes easier, and therefore the need to avoid access to fire arms and explosives, as well as access to gun dealers, becomes apparent.

Such measures, in turn, would require for the European Union to adopt an effective and necessarily joint response, since nowadays it is a well-known phenomenon and we must not forget that we are beyond the point of reacting to a novel phenomenon. The transient nature of activists implies a high number of countries being affected and calls for an effective response from multilateral forums.

Battling the terrorist threat is a European challenge that requires a European answer. The Commissioner for Justice, Consumers and Gender Equality, Vera Jourova, at the opening of ECLAN’s 10th anniversary, stated her priorities in European criminal justice and urged EU Members to tackle serious cross-border crime on various fronts, being careful to strike the right balance, fighting all forms of crimes (including jihadist terrorism and radicalization), combatting hate speech and hate crime, preventing the anti-Muslim hatred to spread. Another objective is to improve judicial cooperation between the criminal justice authorities of all Member States, with judicial cross-border cooperation, expanding the exchange of information on past criminal convictions to third country nationals and stateless people. She is launching infringement proceedings against Member States that have not yet transposed the three Framework Decisions on detention or ECRIS.

Among the issues still to be addressed by the EU’s law is the conflict of jurisdiction on the transfer of proceedings and digital evidence. Also the digitalization of national legal systems to extract relevant data must be provided.

Those objectives are to be completed with packages on victims’ rights, improving the procedural safeguards related to pre-trial detention. Another objective is to improve detention conditions and fight radicalization both inside and outside prisons.

The text also reflects the particular situation of the victims themselves, who have a right to protection, since these attacks can affect everyone regardless of nationality. Security is indeed a primary responsibility of the State, and it has a margin of appraisal to adopt specifically relevant measures for safeguarding national and foreign citizens, and if applicable, for the protection of terrorism victims, which grants it an “added value,” although it should include their compensation. The 2012/29/EU Directive assigned them a singular protection, and for this reason the current purpose is to incorporate specific dispositions to give substantial support to the victims in the guarantee of their rights. This effort must be started though a higher regulatory precision, establishing common definitions of terrorist action *ex ante* and *ex post*. Various “preparatory” actions should be included, such as those deemed necessary for committing the crime, as well as “material assistance” and “complicity;” also *a posteriori* actions should be taken into account, such as providing a necessary material help (e.g. transportation of the perpetrators of terrorist attacks) and financing the attacks.

5. Conclusion

The supervision of current legislation will harmonize domestic laws, allowing States to adapt their behavior to preexisting international obligations and parameters. The Proposal hardens offenses classified as recruiting, training, and distribution of propaganda. In an innovative stance, it indicts behaviors linked to terrorist activities, elevating to the status of offenses the possible movements of foreign fighters, as well as financing and aiding of movements within or outside the Union.

The increasingly stronger link between internal and external challenges requires meeting common objectives. It is therefore indisputable that it demands an effective and integrated use of the EU’s broad range of instruments to give an effective response in the fight against terrorism, harmonizing criminalization to prevent and prosecute foreign terrorist fighters. The States also commit to investigate training activities which could lead to terrorist acts, improving relations between international organizations by active diplomatic efforts on the part of the High Representative and the Member States, involving all government agencies at different levels, reinforcing cooperation, and responding in an appropriate manner to the increasing cross-border practical challenges. Simultaneously, the action plan improves gun and explosive (as well as substances involved in their manufacture) traffic control,s as it restricts fire gun purchases.

In order to accomplish these objectives, the EU must embark on a dialogue on security with key strategic partners and neighboring countries. The future action

should be linked to the EU's financial instruments maximizing the added value of the EU's measures for information exchange, and operational cooperation.

The lessons drawn from the past must help us to tackle this new phenomenon, deepening our knowledge through a necessarily holistic approach. The abilities sadly acquired through the Spanish experience should contribute to the development of international cooperation in the common fight against terrorism.

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